



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AFSCME, LOCAL 863, SOMERSWORTH
ADMINISTRATIVE SUPPORT STAFF and
PUBLIC WORKS UNIT

Complainant

v.

CITY OF SOMERSWORTH, NEW HAMPSHIRE

Respondent

CASE NO. A-0534:2

DECISION NO. 90-107

APPEARANCES

Representing AFSCME, Local 863 Somersworth Admin. Support Staff & P.W.:

Harriett Spencer, Staff Representative, AFSCME

Representing City of Somersworth:

Dorothy M. Bickford, Esq., Counsel

Also appearing:

Philip Munck, City of Somersworth

Kim Hilaire, City of Somersworth

BACKGROUND

On January 26, 1989 AFSCME, Local 863, (Union) Somersworth Administrative Support Staff and Public Works unit filed an unfair labor practice charge against the City of Somersworth (City) and its manager alleging a failure to negotiate in good faith. The charges outlined the history of various negotiations between the parties and the Union's communication to the City Manager of their intention to negotiate for '89-'90.

The City through its Manager stated that the correspondence directed to him by the Union representative setting forth its intention and desire to conduct negotiations was not submitted in a timely fashion and, therefore, the city declined to enter into negotiations on the basis that it was not timely. The City by its counsel responded to the unfair labor charges setting forth the fact that certain of the postal transmissions of the intention of the union to negotiate were dated on certain dates but the date received fell outside of the time limit prescribed by statute and, therefore, the City did

not in fact have to negotiate under those circumstances. He offered certain exhibits and made reference to times and dates as to the notification received. He also disputed the fact that the Union claimed that the notices were mailed on November 1 and the City did not receive them until December 21, 1988 and further contended that the Manchester Post Office postal mark indicated it was received there on December 20, 1988.

The City by way of further answer made reference to RSA 273-A:3, Par. 2 (a) which sets forth the time factors involved in the requirement for the party who desires to negotiate to serve written notice on the other party and which must be served at least 120 days before the budget submission date; and that in order for the negotiation to go forward, the City should have received the notice no later than November 15, 1988. The City did not receive the notice sent by the union dated November 1 until December 21, 1988.

The City also stated that it is perfectly within its statutory rights in declining to negotiate with the Union regarding the 1989-90 collective bargaining agreement as it failed to properly file their notice of intent to negotiate. The City requested dismissal of the complaint.

Hearing in this matter was held on April 27, 1989 in the office of the PELRB in Concord, New Hampshire with all parties present and offering testimony to substantiate their written allegations and response.

The focus of this case points to one question and one question only. Did the notice of intent to negotiate allegedly sent to the City by AFSCME Local 863 arrive in sufficient time to comply with the statutory requirements?

Testimony and witnesses offered evidence at the hearing as to the possibility of the mail being lost at the Post Office or the postage meter being tampered with by date changes.

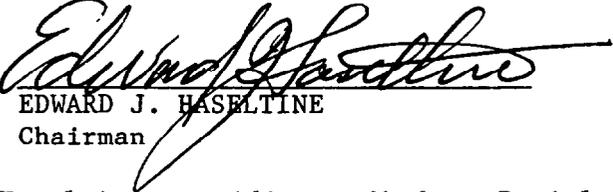
FINDINGS OF FACT

1. This dispute arises as to whether or not the parties complied with the notification requirement required by 273-A relative to the filing of intent to negotiate. The Board finds that substantial evidence was offered to prove that the parties had in effect complied with the requirement.
2. We find that the possibility of the lost mail does exist which would result in the conflicting dates, however, the parties to this contract have previously negotiated contracts, were aware of the upcoming negotiations for a new contract and knew that at some point in time they would have to sit at the table. It is apparent that the City is using an alleged technicality in order to refuse to negotiate.
3. This decision is now MOOT as the parties have subsequently conducted negotiations whether finalized or not is immaterial.
4. The Board finds the intent of the parties with respect to the notices were clearly known to all parties as evidenced by the attempts made to comply with the requirements of notification in the case before us.

DECISION AND ORDER

The parties are hereby ordered to conduct meaningful negotiations for the purpose of reaching agreement for the '89-'90 period.

Signed this 17th day of October, 1990.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding. Members Daniel Toomey, Seymour Osman and Richard W. Roulx present and voting.